

Contractors, as defined in 86 Ill. Adm. Code 130.1940, who make improvements to real estate by taking tangible personal property off the market and permanently affixing it to real estate owe Use Tax on the cost price of such tangible personal property. (This is a GIL).

July 26, 2000

Dear Xxxxx:

This letter is in response to your letter dated June 12, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Your opinion is requested regarding your state's sales/use tax treatment of the factual situations described on the enclosed 4 documents, which are titled as follows:

- Underground Construction (Attachment I)
- Directional Drilling (Attachment II)
- Wire on Poles (Attachment III)
- Poles - Wiring/Foundation, etc. (Attachment IV)

If you have any questions regarding the enclosed documents, please feel free to call me at ####, e-mail ####, fax at #### or write to me at the above address.

Thank you for your assistance with this matter.

Attachment I stated:

UNDERGROUND CONSTRUCTION

FACTS

Company A enters into a contract with a customer to do the following:

1. Using Company A's equipment (or equipment it leases), a tunnel or trench is made by removing ground (e.g., dirt, rock, stones, etc.) and placing it above ground.

2. Pipe is placed in the tunnel or trench and is covered up with dirt, rock, stone or sand. Black dirt and seed are then placed on top of the dirt, rock, sand, etc. The pipe is furnished by the customer.
3. The land on which the tunnel or trench is made may be owned by various persons, including the customer, a utility or municipality, or other persons. (**Note:** The land is not owned by Company A.)

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of Company A's bill to the customer subject to sales/use tax? If yes, under what law or regulations?
- B. Would the answer to 'A' be different if, in Fact 2, the pipe was purchased and furnished by Company A instead of the customer? Is Company A's purchase of the pipe subject to sales/use tax?
- C. Is the tax treatment the same, regardless of who owns the land on which the tunnel or trench is located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:
 - owned by a utility?
 - on which the utility has an easement?
 - owned by a governmental unit such as city, village or county?
 - owned by a corporation or individual?
- D. Is Company A liable for use tax?

Attachment II stated:

DIRECTIONAL DRILLING

FACTS

Company Z enters into a contract with a customer to do the following:

1. Using Company Z's equipment (or equipment it leases), a circular shaped horizontal hole is made in the ground. The ground (e.g., dirt, rocks, stones, etc.) is removed and placed above ground.
2. A pipe is placed in the hole. The pipe is furnished by the customer.

3. The land on which the hole is made may be owned by various persons, including the customer, a utility or municipality, or other persons. (**Note:** The land is not owned by Company Z.)

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of Company Z's bill to the customer subject to sales/use tax? If yes, under what law or regulations?
- B. Would the answer to 'A' be different if, in Fact 2, the pipe was purchased and furnished by Company Z instead of the customer? Is Company Z's purchase of the pipe subject to sales/use tax?
- E. Is the tax treatment the same, regardless of who owns the land on which the hole is located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:
 - owned by a utility?
 - on which the utility has an easement?
 - owned by a governmental unit such as city, village or county?
 - owned by a corporation or individual?
- D. Is Company Z liable for use tax?

Attachment III stated:

WIRE ON POLES

FACTS

ABC enters into a contract with a utility company or telephone company to do the following:

1. Using ABC's equipment (or equipment it leases), ABC attaches wire above ground to poles. Some poles are removed and replaced/moved.
2. The wire is furnished by the utility company or telephone company.
4. The land on which the poles are located may be owned by various persons, including the utility company, telephone company or others. (**Note:** The land is not owned by ABC.)

5. If there are truck tire ruts in performing this job, some dirt may be placed in the ruts by ABC to level the ground and grass seed is planted.

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of ABC's bill to the customer subject to sales/use tax? If yes, under what law or regulations?
- B. Would the answer to 'A' be different if, in Fact 2, the wire was purchased and furnished by ABC instead of the customer? Is ABC's purchase of the wire subject to sales/use tax?
- C. Is the tax treatment the same, regardless of who owns the land on which the pole is located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:
 - owned by a utility or telephone company?
 - on which the utility or telephone company has an easement?
 - owned by a governmental unit such as city, village or county?
 - owned by a corporation or individual?
- D. Is ABC liable for use tax?

Attachment IV stated:

POLES WIRING/FOUNDATIN, ETC.

FACTS

Company B enters into a contract with a customer do the following:

1. Using Company B's equipment (or equipment it leases), Company B digs a trench for electrical wire to connect to a light on a pole. A hole is dug for a light pole foundation.
2. A cement foundation is made for the light pole. Company B purchases the cement for the foundation.
3. Wire is placed in the trench, with the wire partially above ground when it is coming out of the cement foundation, so it can be connected to the light. (**Note:** The connection to the light is not done by Company B.) The wire is furnished by the customer. After the wire is placed in the trench, the trench is filled with sand, gravel or dirt.

4. A pole is attached to the cement foundation. The pole is furnished by the customer.
5. The land on which the trench, foundation and pole are located may be owned by various persons, including the customer, a utility company, a governmental unit or other persons.

QUESTIONS

- A. What is your state's sales/use tax treatment of the above facts? Is any of Company B's bill to the customer subject to sales/use tax? If yes, under what law or regulations?
- B. Would the answer to 'A' be different if, in Fact 3, the wire was purchased and furnished by Company B instead of the customer? Is Company B's purchase of the wire subject to sales/use tax?
- F. Is the tax treatment the same, regardless of who owns the land on which the trench, foundation and pole are located? For example, does it make a difference if the land is owned by the customer, or someone other than the customer? Does it make a difference if it is land:
 - owned by a utility?
 - on which the utility has an easement?
 - owned by a governmental unit such as city, village or county?
 - owned by a corporation or individual?
- D. Is Company B liable for use tax?

In Illinois, tangible personal property that is permanently affixed to real estate is considered an improvement to real property. Construction contractors, as defined in the Department's regulations at 86 Ill. Adm. Code 130.1940, that make improvements to real estate by taking tangible personal property off the market and permanently affixing it to real estate owe Use Tax on their cost price of those materials. See 86 Ill. Adm. Code 130.2075.

Without more detail, it is difficult for us to make a determination as to whether or not the activities you describe result in the permanent affixation of tangible personal property into real estate. Activities such as the "Underground Construction" and "Poles Wiring/Foundation, Etc." activities appear to result in the permanent affixation of tangible personal property into real estate. However, activities such as the "Directional Drilling" (which does not indicate that the pipe is covered with soil after being laid) and "Wire on Poles" (which indicates only that the wires are attached to the poles above ground and that the poles may be removed and replaced) do not appear to result in the permanent affixation of tangible personal property into real estate.

Section 130.2075(d) of the Department's regulations states that contractors incorporating tangible personal property into real estate owned by an exempt entity, such as a governmental body, are exempt from tax. In claiming this exemption, contractors must provide their suppliers with the exemption identification number of the governmental body that owns the property. In addition, they must provide their suppliers with certifications explaining that they are making improvements to realty owned by the governmental body pursuant to a contract, identifying the governmental body by name and address of the realty being improved, and including the date the contract was entered into.

If tangible personal property is not permanently attached to real estate, it is treated as tangible personal property subject to either Retailers' Occupation Tax or Service Occupation Tax. See 86 Ill. Adm. Code 130.2155.

If only services are provided and no tangible personal property is transferred, the services are not subject to tax. An example of this is when the customer provides all the materials. However, if tangible personal property is transferred pursuant to a sale of service, services may be part of the taxable basis if the serviceman chooses to not separately state the selling price of each item of tangible personal property transferred.

Under the Service Occupation Tax Act, a serviceman is taxed on tangible personal property transferred as an incident of the sale of service. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman, depending upon which tax base he chooses to calculate his liability. He may calculate his tax base in one of four ways: 1. separately stated selling price; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on his cost price if he is a registered de minimis serviceman; or 4. Use Tax on his cost price if he is an unregistered de minimis serviceman.

Using the first method, a serviceman may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated based on the tangible personal property transferred and should be stated separately so that the service customer can distinguish the selling price from the tax.

If the serviceman does not wish to separately state the selling price of the tangible personal property transferred, he may use the second method using 50% of the entire bill to the service customer as his tax base. Both of the above stated methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred.

The third way a serviceman may account for his tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. (See 86 Ill. Adm. Code 140.101(f) for the definition of de minimis.) This class of registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon

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their cost price of tangible personal property transferred incident to the sale of service.

The final method of determining tax liability may be used by unregistered de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. A serviceman may qualify as de minimis if he determines that his annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of his annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such a de minimis serviceman may pay Use Tax to his suppliers. The serviceman, then, does not need to collect any additional tax from his service customer nor is he liable for Service Occupation Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.